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4	· EIDOM OUNE		•		
5 .6'	FIRST GENE	RAL COUNSEL'S REPORT	•		
7		MUR: 6941	CELA		
8	·	DATE OF COMPLAINT: 6/10/	/15		
9		DATE OF NOTIFICATION: 6			
10	•	DATE OF RESPONSE: 8/5/15			
11	·	DATE OF ACTIVATION: 1/5			
12	·				
13		EXPIRATION OF SOL: 2/20/1	· · · · · · · · · · · · · · · · · · ·		
1:4		ELECTION CYCLE: 2014			
1.2					
16	COMPLAINANT:	Citizens for Responsibility and	Ethics		
17		in Washington			
18					
19	RESPONDENTS:	National Rifle Association of A	merica Political		
20		Victory Fund and Mary Ros	se Adkins in her		
21		official capacity as treasurer			
22		National Rifle Association Insti	tute for Legislative		
23		Action			
24					
25	RELEVANT STATUTES	52 U.S.C. § 30116(f)			
26	AND REGULATIONS:	52 U.S.C. § 30118			
·27		52 U.S.C. § 30104(b)(3)(A) and	i .		
28		11 C.F.R. § 102.5(a)			
29	•	11 C.F.R. § 104.3(a)(4)(i)			
30		11 C.F.R. § 114.2(a) & (d)			
31		11 C.F.R. § 114.5			
32		11 C.F.R. § 114.7			
33 34	INTERNAL REPORTS CHECKED:	Disclosure Reports			
35.	in the first of the constant,	Biologaig reports			
36	FEDERAL AGENCIES CHECKED:	None			
37 38	I. INTRODUCTION		·		
20	The complete News that the N.	Alamat Digita A analysis as a govern 4500	labbada a anna da a		
39	i ne complaint alleges that the Na	ational Rifle Association's ("NRA")	loobying arm, the		
40	Institute for Legislative Action ("NRA-ILA") solicited \$125,153 from the general public but				
41	deposited the funds into the account of the	ne NRA's separate segregated fund ("SSF"), the National		
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- Rifle Association of America Political Victory Fund and Mary Rose Adkins in her official
- 2 capacity as treasurer ("NRA-PVF"). As a result, the complaint argues that the solicitations were
- 3 actually solicitations for NRA-PVF and were thus improper because they did not adhere to the
- 4 requirements of solicitations for an SSF. The complaint also alleges that NRA-PVF failed to
- 5 report employer and/or occupation information for numerous contributors in the 2014 cycle.

Respondents deny the allegations, asserting that the contributions at issue were not solicited for the SSF but for NRA-ILA and were mistakenly deposited into the NRA-PVF account due to a coding error. Respondents argue that the amount of the misdeposit was small relative to contributions raised in the 2014 cycle, involved only a handful of non-members, and was promptly corrected when it was discovered. Finally, Respondents argue that the 'best efforts' requirements for obtaining contributor information do not apply to contributions solicited for NRA-ILA and that NRA-PVF does comply with the best efforts requirements when soliciting contributions.

As discussed below, the available information indicates that the contributions at issue were solicited for NRA-ILA and not for NRA-PVF. Accordingly, we recommend that the Commission find no reason to believe that NRA-ILA or NRA-PVF violated the Act or Commission regulations with respect to the allegations regarding the solicitation of these contributions.

Further, though the misdeposited funds did not meet the requirements for funds deposited into a federal account, we do not recommend that the Commission pursue this apparent violation

The NRA is a 501(c)(4) corporation. See https://home.nra.org/about-the-nra/; NRA-PVF is NRA's political action committee. See https://www.nrapvf.org/about-pvf/, and is registered as a political committee with the Commission. See NRA-PVF, FEC Form 1, Statement of Organization, Amended, Nov. 19, 2015, http://docquery.fec.gov/pdf/259/201511199003398259/201511199003398259.pdf.

- given that the misdeposits did not otherwise contained impermissible funds, were refunded,
- 2 albeit later, and represent a small amount of the contributions raised by NRA-PVF in the 2014
- 3 elections cycle.² Accordingly, we recommend that the Commission dismiss with caution the
- 4 allegation that NRA-PVF violated 11 C.F.R. § 102.5(a).³
- Finally, NRA-PVF has demonstrated that it used best efforts when collecting and
- 6 reporting contributor information for the 2014 election cycle. Accordingly, we recommend that
- 7 the Commission find no reason to believe that NRA-PVF violated the Act or Commission
- 8 regulations with respect to this allegation.

II. FACTUAL BACKGROUND

The Complaint is based on a Yahoo News article, dated April 21, 2015, which reported that during 2014, the NRA-ILA solicited contributions from the general public through its website that the group represented would benefit NRA-ILA, but were instead deposited into the NRA-PVF account.⁴ The article's author, Alan Berlow, an NRA member, reported that early in the summer of 2014 he made several contributions to the NRA-ILA, including one through the NRA-ILA's website and another through the NRA-PVF's website. Berlow explained that with

See, e.g., MURs 3325 (DSCC et al.), 3891 (Packard), and 3022 (California for Individual Rights); MUR 4961 (DNC Services Corporation/Democratic National Committee) (finding reason to believe that Respondents misdeposited contributions in violation of 11 C.F.R. § 102.5(a) and received contributions in violation of 2 U.S.C. § 441a(f) (now 52 U.S.C. § 30116(f)), Certification, MUR 4961 (July 20, 2001); MUR 6106 (Minnesota Corn Growers Association et al.) (finding reason to believe that Respondent violated 11 C.F.R. § 102.5(a) by accepting funds that were not designated for use in connection with federal elections and 2 U.S.C. § 441b(a) by accepting funds that may have been from prohibited sources); MUR 3325 (DSCC et al.) (finding reason to believe Respondents violated Section 102.5(a) by inadvertently depositing contributions intended for nonfederal account into federal account); MUR 3891 (Packard) (same and taking no further action/cautioning as to violation); and MUR 3022 (same).

³ See Heckler v. Chaney, 470 U.S. 821 (1985).

Alan Berlow, The NRA's Brazen Shell Game with Donations, Yahoo News, April 21, 2015, available at https://www.yalioo.com/politics/the-nras-brazen-shell-game-with-donations-a-116744915796.html.

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his first donation, made through the NRA-ILA website, he accessed the "donate" page and

2 entered his name, address, credit card information, and contribution amount (\$1.00). After

3 clicking "submit donation," Berlow was transferred to another webpage with the NRA-ILA

banner at the top, an NRA-ILA logo in bold letters at the bottom and a URL with the NRA-ILA's

initials. Berlow received a thank you on a page with NRA-ILA banner and then received an

6 email from NRA-ILA thanking him for his donation. However, Berlow's credit card statement

showed a payment to NRA-PVF, which was confirmed by a credit card representative. The

8 Yahoo article included partial screenshots of what appeared to be webpages of credit card bill

9 showing the \$1.00 charge on July 7, 2014 to "NRA PVF INTERNET." Below also reported

receiving a note from NRA-PVF wishing him happy holidays and noting that every dollar

"contributed to NRA-PVF this year all added up to invaluable victories in last month's

12 elections."5

Berlow's second contribution for NRA-ILA was made through the NRA-PVF website.

According to Berlow, clicking a "Donate to the NRA-ILA" "button" at the bottom of the

NRA-PVF's website, directed him to an NRA-ILA webpage where he made his donation. As

with the other contribution, Berlow received online and email thank you messages for

contributing to NRA-ILA but his credit card statement showed that the contribution went to

18 NRA-PVF, not NRA-ILA.6

According to the complaint, archived versions of NRA-ILA's website appear to match Berlow's description of the pages he visited when making the contribution and the screenshots included in the Yahoo News report. Resp. at 3-4.

According to the complaint, archived pages of the webpages match Berlow's description. Id. at 4.

In response to the Yahoo News article, NRA publicly acknowledged that funds solicited

- 2 for NRA-ILA had been inadvertently deposited into the NRA-PVF account as a result of a
- 3 "coding error," which had been corrected. Shortly thereafter, NRA-PVF filed an amended
- 4 disclosure report showing a \$125,153 disbursement to the NRA-ILA on April 28, 2015. The
- 5 Reports Analysis Division ("RAD") sent the NRA-PVF a Request for Additional Information
- 6 ("RFAI") in response to the filing that requested information on the purpose for the disbursement
- 7 and how the original receipts were disclosed. 9 NRA-PVP explained that the disbursement was a
- 8 refund for misdeposited contributions previously disclosed on the May, June, July, August,
- 9 September and October 2014 monthly reports. NRA-PVF stated that the contributions consisted
- mostly of unitemized contributions from individuals who did not contribute more than \$200 in
- the calendar year, and provided a list of the itemized contributions. 10
- Respondents request that the Commission take no further action, asserting that: the
- complaint letter is procedurally deficient because it was submitted to the Audit Division rather
- than to OGC; 11 the allegations were based on a news report and thus cannot be used to justify

Stephen Gutowski, NRA: Accusations in Yahoo News Report are False, Washington Free Beacon, May 29, 2015. http://freebeacon.com/issues/nra-accusations-in-yahoo-news-report-are-false/

⁸ See NRA-PVF's Amended 2015 May Monthly Report http://docquery.fec.gov/pdf/619/15971082619/15971082619.pdf

See RFAI, dated November 24, 2015, referencing NRA-PVPs 2015 Amended Monthly Report.

See Miscellaneous Text (FEC Form 99) dated December 17, 2015 filed by NRA-PVF. The \$125,135.03 represents \$39,040.87 in itemized and \$86,094.16 in unitemized contributions.

CREW's complaint came in the form of a letter to the Audit Division requesting an audit of the NRA, but CREW noted in a footnote to the letter, that if the FEC construes its request for an audit as a complaint under 52 U.S.C. § 30109(a) and 11 C.F.R. § 111.4, CREW and its executive director should be treated as the complainants. CREW also attached a verification in accordance with 11 C.F.R. § 111.4(b)(2) and the letter otherwise meets all the requirements for a proper complaint.

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- opening a MUR or conducting an audit;¹² online donations at issue were solicited for NRA-ILA,
- 2 not for NRA-PVP, and were accidentally deposited into the NRA-PVP account due to a technical
- 3 error; the problem was promptly corrected when the error was discovered; the amount of
- 4 misdeposited funds (\$125,153) represents a small percentage (around 0.2%) of the \$50 million in
- 5 contributions raised by the NRA for its lobbying arm and PAC during the election cycle and only
- a few non-members (33) made contributions. Respondents argue that an inadvertent deposit of
- funds into the wrong account because of a "technical error" does not qualify as a "solicitation"
- 8 because no one was being asked to give money to NRA-PVF; that an SSF my accept
- 9 contributions from persons otherwise permitted by law to make contributions; and that even if
- this is considered a solicitation to the SSF, an "accidental or inadvertent" solicitation is not
- deemed a violation so long as the SSF has used best efforts to comply with the limitations and
- the method of solicitation is corrected forthwith after the discovery of the erroneous solicitation.

III. LEGAL ANALYSIS

A. Alleged Improper Solicitations Outside the Restricted Class and Failure to Include Required Disclosures

17 The complaint alleges that Respondents may have violated the prohibition on solicitations

- to an SSF from outside the restricted class when contributions solicited from the general public
- on the NRA-ILA's and NRA-PVF's websites were deposited into the account of its SSF,
- 20 NRA-PVF. 13 The complaint further alleges that to the extent solicitations by NRA-ILA should
- be treated as NRA-PVF solicitations, the failure to inform potential donors of the political

Respondents acknowledged that funds solicited by NRA-ILA were deposited into the NRA-PVF account, so this point is moot.

¹³ Resp. at 5-6.

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- 1 purposes of NRA-PVF or that their funds would be used in connection with a federal election led
- 2 potential contributors to believe they were contributing to NRA-ILA.¹⁴ The complaint requests
- that the Commission investigate Respondents' claims regarding the number of contributors
- 4 affected, whether their solicitations complied with the law, and whether the misdeposits were
- 5 inadvertent and promptly corrected. 15

An incorporated membership organization may establish and administer an SSF¹⁶ and may solicit contributions to its SSF only from its noncorporate members, its executive and administrative personnel, and the families of both of these groups at any time (*i.e.*, the restricted class").¹⁷ Commission regulations require SSFs to include certain disclosures in its solicitations

The available evidence does not support the complaint's assertions that the solicitations for NRA-ILA should be treated as solicitations for NRA-PVF. First, the description of the Berlow solicitations as well as the partial screenshots of the webpages, make it clear that the solicitations were for the NRA-ILA. The first solicitation was made through the NRA-ILA website and the contributor knew at all times that the contribution was intended for NRA-ILA.

for contributions, including "the political purposes of the fund." 18

The complaint also alleges that the NRA-ILA and NRA-PVF websites lacked the requisite disclaimer for political committees indicating who paid for the website soliciting the donations. All websites of a political committee available to the general public and all public communications by any person soliciting contributions must include a disclaimer that clearly states the full name and permanent street address, telephone number, or web address of the person who paid for the communication and that the communication is not authorized by any candidate or candidate's committee. 11 C.F.R. § 110.11(a), (b)(3), (c)(1). NRA-ILA is not a political committee registered with the Commission, therefore it is not required to display a disclaimer on its website. NRA-PVF on the other hand is a registered political committee and its website does include a proper disclaimer.

¹⁵ *Id*.

See 52 U.S.C. §§ 30118(b)(2)(C), 30101(4)(B);11.C.F.R. § 114.5(b).

¹¹ C.F.R. § 114.7(a); 52 § 30118(b)(4)(A)(i); 11 C.F.R. § 114.5(g)(1).

¹⁸ 52 U.S.C. § 30118(b)(3)(B)-(C); 11 C.F.R. § 114.5(a)(3)-(5).

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- The second solicitation was made from the NRA-PVF website but was clearly marked for
- 2 NRA-ILA and processed through NRA-ILA webpages.

3 Indeed, the complaint's assertion appears to be based on the fact that the deposits ended up in the NRA-PVF account. However, the response denies that the contributions were intended 4 for NRA-PVF and without more, there is nothing which would lead us to question the assertion 5 6 that the misdeposits were due to a technical error. Further, the amount of misdeposited funds 7 involved only a small percentage of the total amount in contributions received by the NRA-PVF 8 and NRA-ILA during the 2014 election cycle. Moreover, an SSF may accept an unsolicited contribution that is otherwise lawful, from outside its restricted class. 19 Based on the above, it 9 appears that the contributions were solicited by NRA-ILA for NRA-ILA but were inadvertently 10 deposited into the SSF account. Thus, we recommend that the Commission find no reason to 11 believe that NRA-PVF or NRA-ILA violated 52 U.S.C.§§ 30104(b)(3)(A), 30118(b)(3)(B)-(C), 12 30118(b)(4)(A)(i) and 11 C.F.R. §§ 104.3(a)(4)(i), 114.5(a)(3)-(5) or 114.5(g)(1) with respect to 13 the allegations of solicitations for an SSF outside the restricted class and failure to include 14

B. Improper Deposits Into a Federal Account

The complaint separately alleged that the solicitations failed to expressly state that the contribution will be used in connection with a Federal election.²⁰ As a political committee that finances both federal and non-federal political activity, NRA-PVF may only accept funds subject

required notices in solicitations for an SSF.

¹¹ C.F.R. § 114.5(j). We note that Commission regulations provide that an "[a]ccidental or inadvertent solicitation" of persons outside a restricted class "will not be deemed a violation," if a corporation or SSF "used best efforts to comply with the limitations regarding the persons it may solicit and that the method of solicitation is corrected forthwith after the discovery of such erroneous solicitation." 11 C.F.R. § 114.5(h).

²⁰ Resp. at 6; 11 C.F.R. § 102.5(a)(2).

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- to the prohibitions, contribution limits and solicitation restrictions of the Act.²¹ The solicitation
- 2 requirements specify that funds deposited into such an account meet one of the following
- 3 conditions: (i) be designated for the federal account; (ii) result from a solicitation expressly
- 4 stating that the contribution will be used in connection with a federal elections; or (iii) come from
- 5 contributors who are informed that all contributions are subject to the prohibitions and
- 6 limitations of the Act.²²

None of the notice requirements in section 102.5(a)(2) were met for the contributions that were deposited into the SSF account. Commission precedents support finding violations of section 102.5(a) where committees misdeposit into federal accounts contributions that belong in non-federal accounts.²³ The purpose for the regulation is to ensure that funds deposited into a federal account are from contributors that were informed of the intended use of their contributions.²⁴ This notice requirement is separate from and in addition to the requirements that the funds comply with the Act's source and amount limitations.²⁵

However, we do not recommend that the Commission pursue NRA-PVF for this apparent violation of section 102.5(a)(2) given that the misdeposited contributions resulted from a coding error, did not contain impermissible funds, were refunded, albeit later, and represent a small amount of the contributions raised by NRA-PVF in the 2014 election cycle. Accordingly, we

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¹¹ C.F.R. § 102.5(a)(1)(ii) and (2). NRA-PVF's disclosure reports reflect disbursements for non-federal elections. See e.g., 2015 December Monthly Report, Line 29 (Other Disbursements) Detailed Summary Page.

²² 11 C.F.R. § 102.5(a)(2).

See footnote 2, supra.

See Explanation and Justification for Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 F.R. 49,073 (July 29, 2002).

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- recommend that the Commission dismiss with caution the allegation that NRA-PVF violated
- 2 11 C.F.R. § 102.5(a) by accepting funds that were not designated for a federal account.²⁶

C. Alleged Reporting Violations

The treasurer of a political committee is responsible for disclosing the occupation and name of employer of each individual whose contribution exceeds \$200 per election cycle either by itself for when aggregated with other contributions from the same contributor.²⁷ When a treasurer of a political committee shows that the committee used "best efforts" to obtain, maintain, and submit the information required by the Act, the committee's reports will be considered in compliance with the Act.²⁸ Best efforts require, among other things, that within 30 days after the receipt of the contribution, the treasurer make at least one effort to obtain the missing information, in either a written request or a documented oral request.²⁹

Complainant alleges that Respondents failed to request contributors' employer and occupation for the \$125,153 in online contributions that were deposited into the NRA-PVF account and that NRA-PVF also failed to report the employer and/or occupation for hundreds of contributors in 2013 and 2014. As discussed above, the available information does not indicate that the online contributions at issue were solicited by the NRA-ILA for the NRA-PVF. Second, while NRA-PVF disclosure reports for the 2014 cycle reflects itemized contributions lacking occupation or employer information, the NRA-PVF appears to have met the requirements for demonstrating "best efforts" to obtain this information. In its response, NRA-PVF asserts that it

²⁶ See Heckler v. Chaney, 470 U.S. 821 (1985).

²⁷ 52 U.S.C. § 30104(b)(3)(A) and 11 C.F.R. § 104.3(a)(4).

²⁸ 52 U.S.C. § 30102(i).

²⁹ 11 C.F.R. § 104.7(b).

- exercises best efforts to obtain contributor information and states that it uses the required
- 2 language under 11 C.F.R. § 104.7(b) on its solicitation forms.³⁰ In addition, the NRA-PVF
- 3 procedures for obtaining the information, as set out in its response to a Request for Additional
- 4 Information from the Reports Analysis Division ("RAD") comply with the requirements for best
- 5 efforts documentation under the RAD Review and Referral Procedures for the 2013-2014
- 6 Election cycle.³¹ Finally, according to RAD, NRA-PVF disclosure reports for the 2014 election
- 7 cycle show that it has filed amended schedules and reports disclosing additional contributor
- 8 information.³²
- Accordingly, we recommend that the Commission find no reason to believe that
- 10 NRA-ILA violated 52 U.S.C. § 30104(b)(3)(A) and 11 C.F.R. § 104.3(a)(4)(i) by failing to
- collect or report contributor information for the \$125,153 in online contributions that were
- deposited into the NRA-PVF account and no reason to believe that NRA-PVF violated 52 U.S.C.
- § 30104(b)(3)(A) and 11 C.F.R. § 104.3(a)(4)(i) by failing to collect or report contributor
- information for its 2014 cycle itemized contributions.³³

³⁰ Resp. at 4-5.

See RAD Review and Referral Procedures for the 2013-2014 Election Cycle (Best Efforts Documentation, pp. 80, 81); Request for Additional Information for the NRA-PVF 2013 Amended February Monthly Report, dated April 26, 2013, and the NRA-RVP Response, Miscellaneous Text (FEC Form 99) dated May 29, 2013.

See generally NRA-PVF amended disclosure reports for the 2014 election cycle. In addition, a number of the misdeposited contributions that were itemized contain occupation/employer information.

There is no allegation that NRA-PVF received direct donations from NRA-ILA, which could lead to violations related to the receipt of impermissible funds. The contributions at issue here were from individuals and do not appear to have contained any excessive or prohibited contributions.

III. RECOMMENDATIONS

2	1.	Find no reason to believe that National Rifle Association of America Political			
4		Victory Fund and Mary Rose Adkins in her official capacity as treasurer or National Rifle Association Institute for Legislative Action violated 52 U.S.C.			
5				(C), 30118(b)(4)(A)(i) and 11 C.F.R.	
6		§§ 104.3(a)(4)(i), 114.5(a)(3)-			
7		38 10 1.5(a)(1)(1); 114.5(a)(5)	(3) 01	1.14.5(g)(1).	
8	2.	Dismiss with caution the allegation that National Rifle Association of America			
9	4,	Political Victory Fund violated 11 C.F.R. § 102.5(a)(2).			
0		Total Violoty Lund Violator	u, 11 C	5.1 AC. § 102.5(a)(2).	
1	3.	Approve the attached Factual and Legal Analysis.			
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13	4.	Approve the appropriate letter	S.		
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17				Daniel A. Petalas	
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